IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WP(C).No. 6590 of 2007(H)

PETITIONER:

K.BHASKARAN,
SHEELA BHAVAN,
THETTICHIRA, KURAKKADA.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENTS:
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1. DISTRICT COLLECTOR,
COLLECTORATE, VANCHIYOOR,
THIRUVANANTHAPURAM.

2. THASILDAR(LAND ACQUISITION),
OFFICE OF THE THASILDAR(LA),
THIRUVANANTHAPURAM.

3. KERALA WATER AUTHORITY REPRESENTED BY
ITS MANAGING DIRECTOR, JALA BHAVAN,
THIRUVANANTHAPURAM.

4. PRINCIPAL SECRETARY TO GOVERNMENT,
WATER RESOURCES(WSC)DEPT.,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI L.G.SURESH BABU, R1, 2 & 4
BY GOVERNMENT PLEADER SMT. AMBIKADEVI R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 6590 OF 2007

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Dated this the 10th day of April, 2007

J U D G M E N T

Heard. Admitted. Learned Government Pleader took notice for respondents 1, 2 and 4. Learned Standing Counsel, Smt.Ambika Devi, took notice for the third respondent. Writ Petition itself is heard and disposed of as agreed to by the parties.

2. Petitioner is the owner of three acres of land comprised in Sy.No.1238/17-12 of Azhoor Village. He had given 20 cents of land to his son Anilkumar and another 20 cents to another son Jayakumar. It is averred that on 26.10.2004 the Water Resources Department granted administrative sanction for taking initial steps for acquisition of an area having 28 cents for the construction of OHSR and GLSR for the rehabilitation of water supply to Azhoor, Kizhuvalam, Avanavancheri and Keezhattingal in Thiruvananthapuram District by invoking the urgency clause under Section 17(4) of the Land Acquisition Act. It is averred that no Notification under Section 4(1) of the Act or a

declaration under Section 6 of the Act was issued by the respondents. It is averred that on 26.4.2005 officials of the third respondent came to the property of the petitioner and surveyed the land and planted some survey stones. It is averred that leaving the area planted with survey stones, Anilkumar, one of the sons of the petitioner, constructed a house. It is averred that on 23.6.2006 another Officer of the third respondent came to the property in question and shifted the stones already planted so as to include the building constructed by the son of the petitioner. On 23.6.2006 Petitioner filed complaints before the District Collector and Land Revenue Commissioner. District Collector did not give any reply. On 9.1.2007 the Land Revenue Commissioner gave reply to the petitioner stating that construction was effected after the publication of the Notification for acquisition in the Gazette and also in the Newspapers. It was also stated in the reply that the area notified to be acquired will not serve the purpose and the Executive Engineer has reported that deviation is necessary. It is averred that no Notification under Section 4(1) of the Act was issued or necessary enquiry under

Section 5A of the Act was conducted. Hence the petitioner prayed for quashing Exhibit P1 sanction granted by the 4th respondent. Petitioner also prayed for a writ of mandamus prohibiting the respondents from taking any further action to acquire the land comprised in Sy.No.1238/17.12 of Azhoor Village in pursuance of Exhibit P1 sanction.

3. Third respondent filed a statement in which it is stated that the Scheme was sanctioned in the year 2003 with the Loan assistance of LIC of India for providing drinking water to the areas notified. The project cost of the Scheme is Rs.683 lakhs. A Well cum pump house, treatment plant, O.H. tank, pumping main and distribution system, pumpset and transformers are common component of water supply scheme to Attingal Municipality Augmentation Scheme. All the aforesaid items are completed except treatment plant which was already completed upto 85% and the balance 15% will be completed soon. It is averred that the land for the construction of the water tank at Thettichira, Azhoor Panchayat is yet to be received by way of acquisition proceedings. Therefore the construction of the water tank

cannot be started. It is averred that only on acquiring land water tank can be constructed. It is averred that for the construction of OHSR for the aforesaid Scheme, 20 cents of land is required and land was located in Sy.No.1238/17-12 of Azhoor Village, owned by the petitioner. It is averred that requisition was forwarded to the District Collector on 1.7.2003 for acquiring land. A request was also forwarded to the District Collector to acquire the land invoking urgency clause under Section 17(4) of the Act. District Collector informed the Water Authority that sanction of the Government was required to invoke the urgency clause under Section 17(4) of the Act and as such Government was approached. Government accorded sanction to acquire land by invoking the urgency clause under Section 17(4) of the Act. It is averred that thereafter a joint inspection was conducted on 26.2.2005 and with police protection survey was conducted. It is averred that a combined Notification under Sections 4 and 17(4) of the Act was published in the Kerala Kaumudi daily dated 25.6.2005 and copy of the same was produced as Annexure IV. The Assistant Executive Engineer,

Water Authority, informed the Land Acquisition Officer that alignment stones were already planted and requested him to initiate action. It is stated that the petitioner had removed the survey stones after the publication of the Notification. The Surveyor who conducted the inspection reported that the area available within the alignment stones was only 15.5 cents. On account of the delay, another Notification under Section 4 and 17 (4) of the Act was published in the Kerala Kaumudi daily on 23.8.2006. It is stated that on account of the acts of the petitioner the entire project is delayed. It is averred that the building in question was constructed after the Gazette Notification. It is averred that the water tank can be constructed on the 15.5 cents of land. It is averred that since the building was constructed after the Gazette Notification, the petitioner is not entitled to any relief.

4. Petitioner filed a reply affidavit stating that the building was constructed after the demarcation excluding the property which was proposed to be acquired and now the attempt is acquire that bit of land also in which the building is

constructed.

5. Material on record shows that Government accorded sanction to acquire land invoking the urgency clause under Section 17(4) of the Act on 26.3.2004. On 30.3.2004 the District Collector had wrote a letter to the Executive Engineer, Water Supply Division, Attingal stating that proceedings cannot be initiated without obtaining Government sanction. Government accorded sanction on 26.10.2004 as evidenced by Exhibit P1 and in pursuant to that sanction, the Water Authority issued an order on 5.11.2004 requesting the District Collector to acquire 20 cents of land invoking the urgency clause. On 15.3.2005, the Special Tahsildar (LA), Thiruvananthapuram wrote a letter stating that a joint inspection was conducted on 23.2.2005 but area was not peg marked by planting stones. On 25.6.2005 a combined Notification under Section 4 and 17(4) of the Act was published. On 2.11.2005, the Land Acquisition Officer wrote a letter to the Executive Engineer, Water Authority stating that the Surveyors who went to the property on 22.10.2005 for effecting survey were unable to identify the alignment stones from the ordinary

stones planted in the property. It is to be noted that the initial survey was made jointly by the officials of the Survey Authority and Water Authority and the area was earmarked. Still the Land Acquisition Officer reported that Surveyors were unable to identify the alignment stones. He again wrote a letter on 28.1.2006 stating that the Surveyors were not able to distinguish the alignment stones from the ordinary survey stones. On 28.2.2006 the Land Acquisition Officer wrote another letter stating that though alignment stones were planted demarcating the 20 cents of land, the second survey made by the Surveyors on 8.2.2006 revealed that only 15.5 cents of land alone is available. Probably because of the delaying tactics adopted by the Land Acquisition Officer, a fresh Notification was also issued under Section 4 and 17(4) of the Act, though legally no such Notification was necessary.

6. Learned Standing Counsel for the Water Authority made available for me a letter written by the District Collector to the Executive Engineer on 2.5.2006 (No.K3.21167/04 dated 2.5.2006) in which it was stated that though initially the

Notification was for acquisition of 20 cents, the area covered by the alignment stones is only 15.5 cents and requested the Executive Engineer to take steps since the Notification will lapse on 23.7.2006.

7. The specific case put forward by the petitioner is that after the planting of alignment stones he had constructed the building outside the area which was earmarked for construction of the water tank. This averment is denied by the third respondent. It is contended that the petitioner constructed the building after the area was earmarked. Even if the contention of the petitioner is accepted as such, the proceedings is not liable to be quashed. Unless the petitioner establishes mala fides, the Notification issued under Section 17(4) of the Act cannot be quashed. Admittedly the petitioner owns three acres of land. According to him he had executed a Will by which he had given two plots of 20 cents land each to two of his sons. So even if the site of the building is excluded, the authority will have to acquire the property belonging to the petitioner. Learned Standing Counsel for the Water Authority submitted that because of the

topography of the land a plateau of 20 cents of land is required and it is necessary to construct the water tank on the top of a hillock, so that there will be steady supply of water and this 20 cents area alone is most suitable for construction of the water tank. This Court cannot sit in judgment over the decision of experts and hold that the Authority shall shift the construction of the water tank to some other place. So it is not possible to accept the contention of the petitioner that all these proceedings were initiated by the authorities with the full knowledge that the petitioner's son had constructed a building outside the area earmarked. As there is no evidence to establish mala fides, I do not find any reason to quash the proceedings initiated by the Authorities for construction of the water tank. The Writ Petition is devoid of any merits and it is only to be dismissed.

In the result, the Writ Petition is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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9TH APRIL, 2007